

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

WOLFRAM BERGER et al.,

Plaintiffs and Appellants,

v.

CALIFORNIA INSURANCE  
GUARANTEE ASSOCIATION,

Defendant and Respondent.

B174412

(Los Angeles County  
Super. Ct. No. BC265484)

ORDER MODIFYING OPINION  
AND DENYING PETITION FOR  
REHEARING

[NO CHANGE IN JUDGEMENT]

THE COURT:

It is ordered that the opinion filed herein on April 27, 2005 be modified as follows:

On page 8, line 5, following the citation *Black Diamond Asphalt, Inc. v. Superior Court* (2003) 114 Cal.App.4th 109, 118, substitute “see Ins. Code, §§ 1063.5, 1063.14.” for “see Ins. Code, § 1063.5.”

In its respondent’s brief at page 11, CIGA identifies as a question presented by the appeal, “[C]an [Code of Civil Procedure] Section 340.9 be used to revive a time barred Northridge Earthquake insurance claim to create a ‘covered claim’ payable by CIGA . . . .” At page 40 CIGA specifically argues, “The statute [Code of Civil Procedure section 340.9] does not attempt to retroactively change the terms or conditions of the policy.” CIGA’s assertion that, in responding to its argument, this court decided the case “based upon an issue which was not proposed or briefed by any party to the proceeding”

in violation of Government Code section 68081 is incorrect. Accordingly, the petition for rehearing is denied.

There is no change in the judgment.

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PERLUSS, P. J.

JOHNSON, J.

WOODS, J.